

RESPA Changes

Are You Compliant?

by Michelle L. Russo
Vice President, Consumer Real Estate Compliance
Bank of America

The Department of Housing and Urban Development (HUD) published new regulations to amend Regulation X. Regulation X implements the Real Estate Settlement Procedures Act (RESPA). The objective of the rules is to protect consumers from unnecessarily high settlement costs, and to improve certain disclosures required to be provided under RESPA. Final compliance of the rules was effective January 1, 2010. However, on November 13, 2009 HUD published a Press Release (09-215), announcing a “restraint in RESPA enforcement for the first four months of the new rule aimed at mortgage professionals making good faith efforts to comply with the new requirements.” This announcement would extend enforcement only and compliance to the Regulation was still effective January 1.

The final rule reconfigured the Good Faith Estimate (GFE) and HUD-1/1A model forms, prescribing a specific format for use in all RESPA covered transactions.

Although there have been substantial changes to the standard 3-page GFE and to the existing HUD-1/1A,

one requirement that did not change is that a loan originator must still provide the GFE no later than three business days by hand, mail, fax or email.

One significant change is on page one of the GFE. A clear summary of loan terms and total settlement charges must be provided so that the borrowers will be able to use this disclosure to comparison shop among loan originators for a mortgage loan. The rules also impose a 10-day price guarantee on certain required services disclosed on the GFE. It permits the interest rate stated to be available until the date set by the loan originator. After the date, some of loan charges, the per diem interest and monthly payment estimate would be able to change until the interest rate is locked. The estimate of charges for all other settlement services stated on the GFE should be available for at least 10 business days from when the disclosure is provided. Another major change is that there are tolerance limitations on how much costs may vary from the point of issuing the GFE disclosure at the point of settlement. The tolerances are as follows:

- Zero Tolerance – Actual charges at settlement may not exceed the amounts disclosed on the GFE for (1) origination charges; (2) the credit charges for interest rate

chosen while the borrower's interest rate is locked; (3) adjusted origination charges while the borrowers interest rate is locked; and (4) transfer taxes

- 10% Tolerance – The sum of the charges at settlement for the following services may not be greater than 10% above the sum of the amounts listed on the GFE; (1) Lender required settlement services, where the lender selects the third party settlement service provider; (2) Lender required services, title services and required title insurance; and provider identified by the loan originator; and (3) Government recording charges

- Can Change – Any charges not indentified above.

The rules allow originators to revise a GFE and avoid the tolerances in certain instances of a "change circumstance." They are; 1) Acts of God, war, disaster, or other emergency; 2) Information particular to the borrower or transaction that was relied on in providing the GFE and the changes are found to be inaccurate after the GFE has been provided (i.e. credit quality, the amount of the loan, or estimated value of the property); 3) New information particular to the borrower or transaction that was not relied upon in providing the GFE; and 4) Other circumstances that are particular to the borrower or transaction including boundary disputes, the need for flood insurance or environmental problems. A revised GFE must be provided within 3-business days of a changed circumstance.

If the GFE is not provided within the 3-business days, the loan originator has lost the window of opportunity and the original fee amount(s) must be honored. Documentation of the changed circumstance must be retained for no less than three years after settlement.

The new GFE also groups and consolidates all fees and charges into major settlement cost categories, with a single total amount estimate for each category. HUD felt this approach would reduce any incentive for loan originators and others to create a large number of "junk fees" to increase their profits.

In addition to major changes to the GFE, modifications of the HUD-1/HUD-1A settlement statement makes it comparable to the GFE. An addendum to the HUD would compare the loan terms and settlement charges from the GFE to the final charges on the HUD1 and describe in detail the loan terms for specific mortgage related settlement information. If the loan originator identifies a tolerance violation, they may cure the violations by reimbursing the borrower for the excess amount of the charge at settlement or within 30 calendar days after settlement. Reimbursement is deemed timely if they are delivered or mailed within the 30 calendar days.

Issuance of the GFE cannot be conditioned upon payment of any fees other than the credit report. The loan originator may not charge additional fees until after the applicant has received

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the GFE. This is consistent with the recent amendment of Regulation Z (12 CF4 226.19(a)).

Another change to the RESPA rules is the permissibility of using an “average charge” for settlement service on the final HUD-1/HUD-1A. The average charge must be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a “particular class of transactions.” The particular class of transactions must be defined by the settlement service provider for; 1) a period of time no less than 30 calendar days and not more than 6 months; 2) a geographic area as determined by the settlement service provider; or 3) a type of loan. If an average charge is used in any class of transaction, the same average charge must be used by the service provider for every transaction within that class. An average charge may not be used where the charge is based on the loan amount or value of the property. Any documentation used to calculate the average charge must be retained for 3 years after any settlement for which the average charge was used.

RESPA revisions prohibit a loan originator from requiring the use of an affiliate. Required use is a situation in which a person’s access to some distinct service, property, discount, rebate, or other economic disincentive or penalty, is contingent upon the person using or failing to use a preferred provider of settlement services. In order to qualify for the affiliated business exemption, a settlement service provider may offer a combination of bona fide settlement services at a total price (net of the value of the associated discount, rebate, or other economic incentive) lower than the sum of the market prices of the individual settlement services and will not be found to have required the use of the settlement service providers as long as; 1) the use of any such comparison is optional to the purchase; and 2) the lower price for the combination is not made up by higher costs elsewhere in the settlement process.

HUD also revised the definition of an “application”. An application for the purposes of Regulation X and the delivery of the GFE is defined to include; 1) name of the borrower(s); 2) monthly income; 3) social security number; 4) property address; 5) estimated value of the property; 4) amount of the mortgage loan requested; and 5) any other information deemed necessary by the loan originator.

Changes in RESPA include revisions to the Transfer of Servicing disclosures. HUD made modifications to the mortgage servicing disclosure requirements to conform to prior statutory changes. The revisions eliminated the

disclosure of the lender's historical practice regarding the sale or transfer of servicing rights. Additionally, the requirement that loan packages contain signed statements from applicants acknowledging that they have read and understood the disclosure provided. In addition to changes of the Transfer of Servicing disclosures, HUD also revised the Settlement Cost Booklet which provides a borrower with an overview of the home buying process.

The final rule also amends the RESPA regulations to recognize the statutory applicability of the electronic signatures in Global and National Commerce Act (ESIGN) to RESPA. This amendment is intended to make clear that all RESPA disclosures may be provided to consumers in electronic form, as long as the consumer consents to receive their disclosures in such a manner and the other specific conditions of ESIGN are met. The recognition of the applicability of ESIGN to RESPA also makes clear that all documents required to be retained under RESPA may be retained in electronic format, so long as the ESIGN requirements for document retention are met.



Helpful links:

HUDS' RESPA Website -

http://www.hud.gov/offices/hsg/ramh/res/respa_hm.cfm

HUD FAQs (as of April 2, 2010) - <http://www.hud.gov/offices/hsg/ramh/res/resparulefaqs422010.pdf>

Good Faith Estimate - <http://www.hud.gov/offices/hsg/ramh/res/gfestimate.pdf>

Good Faith Estimate Instructions - http://edocket.access.gpo.gov/cfr_2009/aprqr/24cfr3500AppC.htm

HUD-1 – <http://www.hud.gov/offices/hsg/ramh/res/hud1.pdf>

HUD-1 - Instructions – http://edocket.access.gpo.gov/cfr_2009/aprqr/24cfr3500AppA.htm

Michelle L. Russo is Vice President at Bank of America. Ms. Russo has 26 years experience in consumer banking. She has been working the past 11 years in Bank of America's Compliance Department and currently is supporting their Reverse Mortgage business. Previously, she was a Senior Underwriter in their mortgage department. Michelle has a degree in banking and finance.

